

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:05CV73

JOSEPH N. BRIGGS,

Plaintiff,

Vs.

**CITY OF ASHEVILLE, *i.e.*, ASHEVILLE
POLICE DEPARTMENT; and COUNTY OF
BUNCOMBE, *i.e.*, BUNCOMBE COUNTY
SHERIFF,**

Defendants.

ORDER

THIS MATTER is before the Court on the Plaintiff's motion for final execution and order to preclude exempt property rights filed August 22, 2005.

Because Plaintiff's claims were dismissed by the Court on August 22, 2005, there is no monetary judgment against the Defendants from which the Plaintiff is entitled to collect damages. Therefore, this motion is patently frivolous.

Federal Rule of Civil Procedure 11 provides in pertinent part:

By presenting to the court . . . a pleading, . . . an . . . unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances-

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims . . . are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law . . .;

(3) the allegations and other factual contentions have evidentiary support or, . . . are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery

Fed. R. Civ. P. 11(b). Violations of this Rule may result in the imposition of sanctions which may include monetary penalties or injunctions against future filings in this Court. *Pro se* litigants do not have an absolute and unconditional right of access to the courts in order to prosecute frivolous, malicious, abusive or vexatious motions. *Demos v. Keating*, 33 Fed.Appx. 918 (10th Cir. 2002); *Tinker v. Hanks*, 255 F.3d 444, 445 (7th Cir. 2001); *In re Vincent*, 105 F.3d 943 (4th Cir. 1997). The Plaintiff is hereby warned that any future frivolous filing may result in the imposition of monetary sanctions and will result in the imposition of a pre-filing review system. *Vestal v. Clinton*, 106 F.3d 553 (4th Cir. 1997). If such a system is placed in effect, pleadings presented to the Court which are not made in good faith and which do not contain substance, will be summarily dismissed as frivolous. *Foley v. Fix*, 106 F.3d 556 (4th Cir. 1997); *In re Head*, 19 F.3d 1429 (table), 1994 WL 118464 (4th Cir. 1994). Thereafter, if such writings persist, the pre-filing system may be modified to include an injunction from filings. *See*, 28 U.S.C. § 1651(a); *In re Martin-Trigona*, 737 F.2d 1254 (2d Cir. 1984).

IT IS, THEREFORE, ORDERED that the Plaintiff's motion for final execution is hereby **DENIED**.

Signed: September 1, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

